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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,119	01/03/2002	Carter F. Lloyd	2671/4	8414

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EXAMINER

SMITH, JAMES G

ART UNIT PAPER NUMBER

3723

DATE MAILED: 11/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/034,119	LLOYD, CARTER F.
	Examiner	Art Unit
	James G. Smith	3723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 17 October 2002.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-6 and 15-24 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-6 and 15-24 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on 17 October 2002 is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)      4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)      5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ .      6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 17 October 2002 have been approved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "21" has been used to designate both the link and the rod. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

3. The disclosure is objected to because of the following informalities: the numeral "21" is used to designate two different elements.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 2, 4, 18 and 24 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims 2 and 24 recite the anvil as attached to either plate, however the specification and drawings fail to support such a modification, thus it is not enabled.

Claims 4 and 18 recite the upper jaw 13 as pivotally attached to upper handle 16, however the two elements are unitary, thus this is impossible.

6. Normally a claim which fails to comply with the first and/or second paragraph of § 112 will not be analyzed as to whether it is patentable over the prior art since to do so would of necessity require speculation with regard to the metes and bounds of the claimed subject matter, **In re Steele**, 308 F.2d 859, 862-63, 134 USPQ 292, (CCPA 1962) and **In re Wilson**, 424 F.2d 1382, 1385, 496 USPQ 494, 496 (CCPA 1970).

7. The use of the trademark VISE-GRIP® has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 15, 17, 19, 20 and 23 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by any of Jenkin or Small as all show a gripping means and a force

applying means. The shingle forms no part of the claimed "system" and is therefore not a patentable limitation.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. Claims 1, 3, 5, 6, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Jenkin or Small in view of either Sandstrom or Wang.

Either Jenkin or Small shows the claimed invention except for the use of a pivotally attached plate to one of the jaws. Either Sandstrom or Wang suggests that a pliers can have such a pivotally attached plate. It would therefore be obvious to one skilled in the art at the time the invention was made to modify either Jenkin or Small by using a pivotally attached plate because either Sandstrom or Wang suggests the use of such a pivotally attached plate.

12. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Jenkin or Small as this claim only adds the use of a pry bar or claw hammer to pull a nail, which clearly one skilled in the roofing art would carry.

13. Domenge is cited as suggesting the use of two pivotally attached plates.

***Response to Arguments***

14. Applicant's arguments with respect to claims 1-6 and 15-24 have been considered but are moot in view of the new ground(s) of rejection.

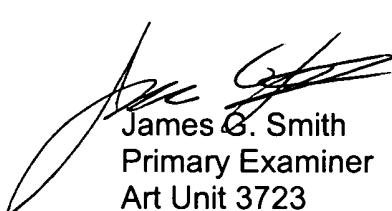
Clearly the use of a sliding hammer on a pliers tool is old in the art and thus the "system" on claim 15 and the broad claims 17, 19, 20 and 23 are clearly anticipated by either Jenkin or Small as these patents show sliding hammers on pliers. The attempt to claim a "system" in claims 15 and 16 is noted, however the system apparently only has a pliers tool like that of either Jenkin or Small and an ordinary prying tool for nail pulling, thus the "system" is old and unpatentable.

The previously allowed subject matter of claims 7 and 8 is reconsidered in view of the newly cited prior art to Sandstrom and Wang, thus merely providing one or both jaws with pivotally attached plates is not patentable.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James G. Smith whose telephone number is 703-308-1746. The examiner can normally be reached on M-Th (7:05- 4:35) first Fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail, III can be reached on 703-308-2687. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3579 for regular communications and 703-305-9835 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

  
James G. Smith  
Primary Examiner  
Art Unit 3723